upa

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1369 OF 2005
IN
SUMMONS FOR JUDGMENT NO.563 OF 2004
IN
SUIT NO.1649 OF 2004

Abdul Sadique Gul Mohammed).. Plaintiff

Versus

Badrunnisa Ali Mohd. Sahibole).. Defendant

Mr.Anoop i/b.S.M. Kazi for the Plaintiff.

Mr.A.A. Siddiqui for the Defendant.

CORAM : SMT. NISHITA MHATRE, J.

DATED : 13TH JULY 2006

P.C.:

. The Defendant has taken out the present Motion for setting aside the decree passed by this Court on 30th March 2005 in the Summons for Judgment. It appears that although an appearance was filed on behalf of the Defendant, Defendant did not file a reply to the Summons for Judgment and, therefore, the decree has been passed.

2. In the affidavit in support of the Motion, it has been stated that the Advocate engaged by the Defendant did not attend the Court on 30th April 2005 when the matter was called out. The Defendant was also unable to remain present since her husband was bedridden and there was nobody to look after him and hence she

could not attend the Court on that day.

3. In my view, after hearing the learned Counsel for both sides, it would be appropriate to set aside the ex-parte decree dated 30th April 2005 on condition that the Defendant deposits an amount of Rs.1,00,000/- (Rupees One lakh ony) in this Court within twelve weeks from today.

4. In the event the amount is deposited, the Prothonotary & Senior Master to invest the same in a fixed deposit of a Nationalised Bank initially for a period of three years to be renewed thereafter till the disposal of the Suit.

5. If the amount is not deposited by the Defendant within the stiuplated period, the ex-parte decree may be executed.